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Supreme Court of the United States

OCTOBER TERM, 1965

No. 358

WALTER E. BRAADT,

Appellant,

against

THE CITY OF NEW YORK DEPARTMENT OF SANITATION (Self-Insurer),

Appellee,

and

NEW YORK STATE WORKMEN'S COMPENSATION BOARD,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION OF WORKMEN'S COMPENSATION BOARD TO DISMISS FOR WANT OF JURISDICTION

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The New York State Workmen's Compensation Board, one of the appellees in the above entitled matter, moves to dismiss the appeal herein on the ground that the Court lacks jurisdiction to hear the appeal in that the appeal presents no substantial federal question; and on the further ground that the appeal states no basis for review under 28 U. S. C. § 1257(2).

Statement

The Appellant, Walter E. Braadt, was employed as a sanitation man by the City of New York in 1950. On September 20, 1959, while so employed, he was injured while on a scow in Fresh Kills Creek, Staten Island.

The employer, one of the Appellees herein, filed a report of this injury with the New York State Workmen's Compensation Board on October 23, 1959 and a claim for compensation benefits was filed with the Board by the claimant, Appellant herein, on December 21, 1959.

Commencing with October 29, 1959, the Appellant was paid compensation by the self-insured employer for disability resulting from his accidental injury and he continued to be paid for subsequent related periods of disability in the aggregate amount of $927, the last payment having been made on March 13, 1962, the last reported date of related disability.

The Appellant had been represented by his present counsel since August, 1960, but it was not until the hearing of October 11, 1962, that the Appellant for the first time asserted that the Workmen's Compensation Board did not have jurisdiction over his claim. The Referee refused to rule on the question as to whether the Board had jurisdiction.

Upon review the Workmen's Compensation Board held that it had jurisdiction over the claim, citing the fact that the parties had "utilized the Board's machinery at a series of hearings resulting in a series of awards as well as payment and acceptance of these awards."

Appellant then appealed to the Appellate Division of the Supreme Court, Third Judicial Department. In a memorandum decision, that Court unanimously affirmed the

determination of the Workmen's Compensation Board (21 A. D. 2d 957, 251 N. Y. S. 2d 376). The Court upheld the Board's jurisdiction over the claim under New York Workmen's Compensation Law, § 113, stating (pp. 957-958):

> "Citing *Matter of Meacham* v. *New York Cent. R. R. Co.* (8 N. Y. 2d 293) the board based its determination of jurisdiction on its findings that 'the parties have utilized the Board's machinery at a series of hearings resulting in a series of awards as well as payment and acceptance of these awards.' These facts are not disputed. Additionally, claimant, having filed his claim on December 21, 1959, was represented after August 8, 1960 by his present attorneys, who appeared at hearings of December 16, 1960 and October 11, 1962 and until the latter date did not question jurisdiction or raise the present contention that claimant had mistakenly believed that Fresh Kills Creek, Staten Island, where the accident occurred, was nonnavigable and that in consequence he was restricted to workmen's compensation; and this although his attorneys were also proctors in admiralty. Contrary to appellant's contention, the principles stated in *Meacham* (*supra*) and in *Matter of Ahern* v. *South Buffalo Ry. Co.* (303 N. Y. 545, affd. *sub nom. South Buffalo Ry. Co.* v. *Ahern*, 344 U. S. 367) are, in our view, applicable to this accident on a scow, and are not limited to waivers of liability arising out of cases which might otherwise be sued under the Federal Employers' Liability Act. Interestingly enough, the maritime act itself, in another context, makes reference to 'cases of personal injury to railway employees'. (U. S. Code, tit. 46, § 688.) Upon this record, the board was not bound to find either the employment or the waiver under Section 113 within the rule which holds invalid a waiver or a waiver statute which 'contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations.' (*Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 216.) The awards were proper, upon the entire record, and are supported by authority.

(See *Grant Smith-Porter Ship Co.* v. *Rohde*, 257 U. S. 469; *Matter of Haglund* v. *Morse Dry Dock & Repair Co.*, 255 App. Div. 895; *Herbert's Case*, 283 Mass. 348.)"

Appellant thereupon appealed to the New York Court of Appeals which unanimously affirmed the Appellate Division decision, without opinion (15 N. Y. 2d 875, 258 N. Y. S. 2d 413 [1965]).

POINT I

The appeal does not fall within the requirements of Subdivision 2 of Section 1257 of Title 28 of the United States Code.

Subdivision 2 authorizes an appeal to the United States Supreme Court from the highest court of a state "where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

This appeal does not directly involve the validity of any statute of New York State. There is no actual question as to the constitutionality of Section 113 of the Workmen's Compensation Law. The sole challenge to this statute is that the Compensation Board and the Courts have held Appellant's acts to constitute a waiver which waiver he claims not to have knowingly made. If this can be construed as raising any constitutional question at all it is submitted that it is one which may only be raised by certiorari and not appeal (28 U. S. C. § 1257[3]), as specifically claiming a right under the United States Constitution.

The constitutional questions nominally raised in this appeal have all previously been decided by this Court, and

Appellant shows no reason for reconsideration or overruling of those decisions at this time.

POINT II

In any event, the appeal fails to raise a substantial federal constitutional question.

The constitutional issues purported to be raised by this appeal relate to the validity of New York Workmen's Compensation Law, § 113 which provides, in part:

> "* * * awards according to the provisions of this chapter may be made by the board in respect of injuries subject to the admiralty or other federal laws in case the claimant, the employer and the insurance carrier waive their admiralty or other interstate commerce rights and remedies, and the state insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter."

Appellant alleges that the waiver provisions are repugnant to and violate Article III, § 2 of the United States Constitution, which extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction." That section also extends the judicial power to "all Cases, in Law or Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority", yet no one would seriously question the right of a State Court to pass upon federal constitutional questions, subject to appellate review by this Court. Therefore, the provisions of that section are not necessarily exclusive, and without more vest no constitutionally protected rights in individual citizens. Actions under this section may, in many instances, be brought in state as well as federal courts.

The real issue is whether the federal statute preempted the field of maritime compensation to the complete ex-

clusion of the State Courts under Workmen's Compensation Law provisions such as are contained in Section 113. This issue, it is submitted, has been decided by this Court contrary to Appellant's contentions. Consequently, the appeal herein contains no substantial federal constitutional or statutory question.

In *South Buffalo R. Co.* v. *Ahern* (344 U. S. 367 [1953], affirming 303 N. Y. 545), the employee challenged the validity of Section 113 as being in unconstitutional conflict with the Federal Employers' Liability Act (45 U. S. C. § 51 *et seq.*). The employee had been injured while performing duties for his employer, an interstate carrier. His claim was filed with the New York State Workmen's Compensation Board, resisted by his employer on the merits, without any challenge to the Board's jurisdiction, and a compensation award was made. After four years Ahern died and his widow filed a claim for a final disability award. Then, for the first time, the employer challenged the Board's jurisdiction, contending that, as to an employee in interstate commerce, "the applicability of the Federal Employers' Liability Act deprived the Workmen's Compensation Board of jurisdiction" (344 U. S., at pp. 368-369).

When the case was before it on appeal, the New York Court of Appeals had held as to Section 113 (303 N. Y., at p. 554):

> "It provides that if the parties waive their Federal rights and remedies the board may act. If the payment of a final award be deemed the waiver, then there is nothing further for the board to do, and no reason for it to act. Obviously then, section 113 means to do no more than codify the rule which is laid down in the early cases. To our mind, the language of the section and that of the legislative committee which recommended its enactment plainly indicates that it is a

permissive statute intended to empower the board to make awards of compensation if all of the parties elect to settle their dispute in that fashion, and forego their Federal rights and remedies. It is not to be imposed upon them in the absence of a joint waiver or agreement evidencing an intention to be bound by its terms. In thus construing that section, we have been guided by the familiar principle of our jurisprudence that the courts are reluctant, and it is only as a last resort, that they will strike down a solemn legislative enactment on the ground that it is unconstitutional. We believe that the interpretation above given to section 113 of our Workmen's Compensation Law, is clearly the proper interpretation, and that as so construed section 113 does not conflict with the fundamental law of the land."

As to the right to waive federal rights the opinion went on to state (p. 555):

"There is nothing contained in the Constitution of the United States which prohibits, nor has the United States Supreme Court held, that, after an accident, all interested parties may not dispose of their controversy as they themselves see fit, provided that the means whereby such dispute is settled or adjusted does not violate public policy. If all of the parties agree that the employer and carrier will pay and the employee will accept compensation, in the amounts and manner provided by the workmen's compensation statute of a State, rather than resort to litigation and the State has permitted its compensation board to make awards under such circumstances, we can conceive of no valid objection to such an arrangement. If the parties agree on a sum of money to be paid in discharge of the claim for personal injuries, such agreement, if there has been no overreaching or fraud, does not violate any constitutional provision, Federal legislation or announced public policy. Neither is there any sound reason why the parties may not designate an impartial third person or group of persons to determine the amount to be paid in extinguishment of the claim. To our mind that is all that section 113 of the Workmen's Compensation Law purports to accomplish."

In affirming the *Ahern* decision this Court held that Congress had preempted the field of injuries to railroad employees, but it, nevertheless, upheld the jurisdiction of the Board under § 113 of the New York statute (344 U. S., at p. 371):

> "We do not doubt that the Federal Employers' Liability Act, supplanting a patchwork of state legislation with a nationwide uniform system of liberal remedial rules, displaces any state law trenching on the province of the Act. State legislatures, for example, may not intrude into the federal Act's interstate commerce perimeter to destroy uniformity by arbitrarily presuming the renunciation of rights which the Act confers, or by compelling parties to elect between the federal remedies and an alternative state compensation plan. *Erie R. Co.* v. *Winfield*, 244 U. S. 170 (1917). The New York Court of Appeals, however, manifested meticulous care to avoid collision, it construed § 113 of the Workmen's Compensation Law as a mere legislative authorization, permitting the Board to effectuate private agreements for compromising a federal controversy by resort to an impartial umpire —'that is all that section 113 of the Workmen's Compensation Law purports to accomplish.' The difference between coercion and permission is decisive; New York's jurisdictional grant, so confined, does not transgress."

Appellant ignores the clear holding of this Court in *South Buffalo R. Co.* and asserts that the federal remedy is exclusive, that the Workmen's Compensation Board is without jurisdiction, and that jurisdiction cannot be conferred by the parties. His only attempt at distinguishing *South Buffalo* is to say that that case involved the FELA and this one involves the Jones Act. But the Jones Act also is permissive. It provides (46 U. S. C. § 688):

> "Any seaman who shall suffer personal injury in the course of his employment *may, at his election,* maintain an action for damage at law * * *." (Emphasis supplied.)

There is no conflict between the federal and state acts. The remedy provided by the Jones Act is thus not made exclusive, and the seaman may either pursue his remedies under the Jones Act or may elect to pursue the remedy provided in the Workmen's Compensation Law.

The only remaining issue on this appeal is whether Appellant actually waived his federal rights. In this Court he alleges the waiver was procured by fraud. His affidavit to the Board, however, indicates he was at all times aware of the possibility of a federal remedy, he was familiar with the method of classification of navigable waters and in fact retained as counsel a firm of attorneys who are also Proctors in Admiralty. At the first compensation hearing, claimant raised the issue of maritime jurisdiction but states that he relied upon the statement of the corporation counsel of the City of New York, representing both the employer and insurance carrier, that Fresh Kills Creek was non-navigable. He also discussed the question with his attorneys who also passed it off on the basis of the city's statement. Either one at that time could have discovered the alleged truth by a phone call to the U. S. Coast Guard and, yet neither saw fit to do so. On this record, it is submitted, the Courts were clearly justified in finding a conscious waiver of any federal rights. Furthermore, claimant and his attorneys appeared at various hearings from 1960 on, yet not until the hearing of October 11, 1962, called for the purpose of final classification as to the permanency of the disability, was any question raised as to jurisdiction.

As in the *South Buffalo* case, the objecting party was guilty of a "long delayed change of heart" (344 U. S., at p. 373).

It is submitted that the Jurisdictional Statement herein presents no issue within the jurisdiction of this Court on

appeal; and, even if the appeal were to be treated as a petition for certiorari, no ground has been shown for granting of relief on that basis.

CONCLUSION

The appeal herein should be dismissed for lack of jurisdiction to hear the appeal on the ground that no substantial federal question is presented, and on the further ground that the Jurisdictional Statement presents no ground for review under 28 U. S. C., § 1257(2).

Dated: July 29, 1965.

Respectfully submitted,

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